IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

Crl.MC.No. 499 of 2007()

AGAINST THE ORDER DATED 31/01/2007 IN IN ST 158/2004 IN
CMP.3223/2006 of ADDL.CHIEF JUDICIAL MAGISTRATE (E & O),ERNAKULAM

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PETITIONER:

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1. ALWAYE FERILIZER INDUSTRIES (P) LTD,
   IX/3830, KEEZHMAD, ALUVA, REP.BY ITS MANAGING
   DIRECTOR, K.A.ABDULKKADER.

2. K.A.ABDULKKADER,
   S/O.K.AHAMMED AMMU, H.P.25, K.K.P. NAGAR,
   U.C.COLLEGE P.O., ALUVA, ERNAKULAM.

BY ADV. SRI.K.N.CHANDRABABU

RESPONDENTS:

ASSISTANT REGISTRAR OF COMPANIES,
KERALA, M.G.ROAD, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/02/2007, ALONG WITH CRMC NO. 502 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.Nos. 499 & 502 of 2007

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Dated this the 28th day of February, 2007

O R D E R

The petitioners face indictment in two separate prosecutions, both under the Companies Act and both filed by the same complainant, i.e. the Asst. Registrar of Companies, Kerala. The prosecutions relate to failure/omission to submit the balance sheet and annual returns. The complainant was not examined as a witness. On his behalf a witness was examined as PW1. It is the case of the accused that he is not in possession of the original documents and they are with the Kerala Financial Corporation, which has taken over the company. When PW1 was examined, the complainant wanted PW1 to be confronted with certain documents. PW1 expressed his ignorance and inability to speak about those documents. In these circumstances, according to the petitioners, they were compelled to request the Court to get the complainant for cross examination so that they could have confronted PW1 with the copies of the documents which are available with them. The learned Magistrate did not grant

them requisite permission by separate orders, which are impugned in these petitions.

2. The learned counsel for the petitioners submits that if an opportunity were not granted to the petitioners to cross examine the complainant and to confront him with the relevant documents, copies of which alone are available with the petitioners, that will lead to failure of justice. The complainant, to whom those documents are addressed, is unlikely to deny receipt of those documents, it is submitted. It is in this context that the petitioners want the complainant himself to be made available for cross examination. I am satisfied that in the given facts and circumstances this is an eminently fit case where powers under Section 311 Cr.P.C. must have been invoked to make the complainant available to the accused for cross examination.

3. The learned counsel for the respondent places reliance on Section 621 (1A) of the Companies Act, which stipulates that personal attendance of the complainant need not ordinarily be insisted. The said section cautiously provides for the option of the court in an appropriate case to insist on such personal attendance in the course of the trial. The said provision cannot also hence justify the impugned orders.

4. These Crl. M.Cs. are accordingly allowed. The impugned orders are set aside. The learned Magistrate shall direct the complainant to appear before the learned Magistrate and give the petitioners opportunity to cross examine the complainant and to confront him with the relevant documents.

(R. BASANT)
Judge

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